

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2002-154-E - ORDER NO. 2002-643 *lee*

SEPTEMBER 6, 2002

IN RE: Leona Crouch/Citizens for Responsible	)	ORDER DISMISSING
Power,	)	COMPLAINT
	)	
Complainants/Petitioners,	)	
	)	
vs.	)	
	)	
Greenville Generating Company, LLC,	)	
	)	
Defendant/Respondent.	)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on a Motion to Dismiss Without Hearing (the Motion) the Complaint of Leona Crouch/Citizens for Responsible Power (the Citizens). The Motion was filed by Greenville Generating Company, LLC (Greenville Generating or the Company). The Citizens filed a Reply to the Motion. For the reasons stated below, the Motion is granted.

As noted in the Motion, by Order dated March 28, 2001, the Commission issued to Greenville Generating a Certificate of Environmental Compatibility and Public Convenience and Necessity (the Certificate) finding compliance with all requirements set forth within the Utility Facility Siting and Environmental Protection Act (the Act). This was Commission Order No. 2001-194. No party or intervenor to the matter sought any rehearing of the Order granting the Certificate, and the statutory time period set forth in

S.C. Code Ann. Section 58-27-2150 (1976) has expired for seeking a rehearing of the Order granting the Certificate.

The Motion alleges that the Citizens lack standing to challenge the Order granting the Certificate because they were not a party to the prior docket, nor did they seek to intervene in said docket. The Certificate has already been issued, and no party sought a rehearing within the time period provided by the appropriate statute, as noted by the Company.

The Response filed by the Citizens alleges that the Company in its Motion failed to take into account the fact that the Citizens filed a detailed complaint under Commission Regulation 103-835, alleging that the Company had failed to meet the statutory criteria mandated by S.C. Code Ann. Sections 58-33-120 and 58-33-160. According to the Citizens, they have standing to complain pursuant to this Commission's jurisdiction under Commission Regulation 103-835. Unfortunately, the Citizens contentions are unavailing.

Clearly, the Citizens did not intervene in the prior docket, and were not therefore a party to that proceeding. No rehearing was requested by anyone, subsequent to issuance of the Certificate. The Citizens have no standing to challenge the findings of the Commission's Order at this point. Nor are the Citizens aided by the Complaint provisions of Commission Regulation 103-835. The Citizens complain that the Company had failed to meet the statutory criteria mandated by two statutes contained in the Utility Facility Siting and Environmental Protection Act. The compliance of the Company with those statutes was exactly what the Commission considered during the proceeding and in its

final order in the certification Docket. The Citizens may not now challenge those adjudicated findings by citing the complaint regulation.

The Citizens also cite S.C. Code Ann. Section 58-27-2130 (1976) as authority for the propriety of their complaint. That statute states in part, “The Commission may at any time..., after notice and after opportunity to be heard as provided in the case of complaints, rescind or amend any order or decision made by it.” (emphasis added) The jurisdiction described by the statute is permissive with the Commission. The Citizens have not given us any reason to exercise the jurisdiction permitted by this statute. The issues presented by the complaint were issues that either were addressed or could have been addressed in the original proceeding in this matter. Accordingly, the recitation of Section 58-27-2130 is unavailing, and we decline to exercise our permissive jurisdiction under that statute.

The Motion references S.C. Code Ann. Section 58-27-1990 (1976) and Regulation 103-821(C)(2) and requests that this Complaint be dismissed without a hearing. The Code Section states that the Commission may dismiss any complaint without a hearing if in its opinion a hearing is not necessary in the public interest or for the protection of substantial rights. The language of the regulation mirrors that of the statute. The Citizens note that these two provisions provide for dismissal in two instances only: (1) when the written opinion of the Commission is that the pleading on its face shows that a hearing is not necessary in the public interest; or (2) for the protection of substantial rights. The Citizens allege that neither one of these instances is alleged, nor supported in the Company’s Motion to Dismiss.

This Commission believes that it is not necessary for the Motion to have alleged either instance. Certainly, if one of the instances exists, the Commission may recognize it sua sponte. In this case, we believe that our prior Commission Order granting Greenville Generating a Certificate shows on its face that no hearing is necessary in the public interest on this complaint matter. The Order granting the Certificate considered and addressed each item contained in the “decision” portion of the Utility Facility Siting and Environmental Protection Act. The items in the complaint merely attempt to rehash the evidence on these or related items contained in the statute, or propound questions that could have been answered had the Citizens been a party to the original proceeding. Again, we held a hearing and issued an Order approving construction of the proposed plant. All evidence presented to this Commission at that time was considered. Therefore, no hearing in the public interest is appropriate in this Complaint matter, since the Commission considered all utility facility siting criteria in its original decision, including the public convenience and necessity criterion.

Accordingly, because of the above-stated reasoning, we grant the Motion to Dismiss.

This Order shall remain in full force and effect until further Order of the Commission.

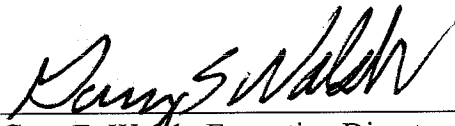
BY ORDER OF THE COMMISSION:



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Mignon L. Clyburn, Chairman

ATTEST:



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Gary E. Walsh, Executive Director  
(SEAL)